

Disposition of the Independent Review Panel



Complainant: Wilmir Barrios

IRP Case: A 2005.175

Date: May 25, 2006

MDPD Case: CR 2005-443

The Independent Review Panel met on May 25, 2006 for the purpose of publicly reviewing the complaint made by Wilmir Barrios against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Recommendations

- 1- That MDPD provide Mr. Barrios a written apology for the inappropriate behavior of the MDPD officers he encountered.
- 2- That Officers Joseph Nagy and Melvin Gonzalez receive a Record of Counseling about inappropriate actions in conducting a records check and in the importance of good police/community relations.

B. Incident

The complainant stated that he was running to Eva Moore Park when it began to rain. He stopped at a gas station to avoid getting wet. While there, a brown unmarked police vehicle pulled up and the two MDPD officers inside, Joseph Nagy and Melvin Gonzalez, began calling people over and asking for their names. When the Complainant was called over he asked why and the officers told him he could be arrested if he didn't comply since he was standing under a "no loitering" sign. The complainant complied and gave his name and stated he had never been arrested. The complainant stated Officer Nagy then called him a liar and said his name came up in the system as having been arrested.

C. Allegations

Detectives Nagy and Gonzalez were intimidating and discourteous when they called him a liar and repeatedly threatened to arrest him.

D. Disposition of the Independent Review Panel

The Panel found the allegation to be **SUSTAINED**, based on the following:

Mr. Barrios' testimony has remained consistent and is credible. The failure of MDPD to participate in the committee meeting makes it difficult to support their account of the incident.

Officer Nagy's actions were not consistent with Miami-Dade County's mission of "delivering excellence everyday." His actions were also in violation of MDPD Administrative Order 2-18, Section H, paragraph 9:

“Effective law enforcement depends on a high degree of cooperation between the Department and the public. While urgency of a situation might preclude ordinary social amenities, discourtesy under any circumstance is indefensible. Employees shall be courteous and civil to the public and others, avoiding harsh, violent, profane, or insolent language or manner, and shall maintain objective attitudes regardless of provocation.”

E. Other Findings

The complainant signed a Promise to Appear (PTA) for an ordinance violation in 1994 but he was not physically arrested. Mr. Barrios answered truthfully, according to his understanding of arrest, when he told the officer he had never been arrested, because he had not been taken to jail.

Officer Nagy was correct to state that Mr. Barrios had a prior arrest record because, by legal definition, he was arrested.

F. Observations to Promote Healthy Police/Citizen Interactions:

An arrest becomes a “Promise To Appear (PTA),” also known as a “Notice to Appear,” when the arresting officer checks a box on the bottom of the Complaint/Arrest Affidavit and allows the person arrested to sign under the paragraph which reads: “I understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued....”

Promises to appear may be issued by arresting officers when the offense involved is a misdemeanor or ordinance violation. By definition, a promise or notice to appear is “a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or government office at a specified date and time.” - Florida Rule of Criminal Procedure 3.125.

The public should be made aware that a Promise to Appear (PTA) is an Arrest Affidavit which the accused violator has signed promising to appear in court. The signed PTA is an arrest document which replaces a physical arrest and allows the person to be released from the scene. Even though a person is not physically placed in handcuffs and taken to jail, a PTA appears as an arrest on his/her record.

The Independent Review Panel concluded the complaint on May 25, 2006.

Independent Review Panel

Committee Recommendation to the Panel

May 25, 2006

Complaint: A 2005.175

MDPD Case: Contact Report 2005-443

Complainant: Wilmir Barrios

Accused Party: Miami-Dade Police Department (MDPD); Officers Joseph Nagy and Melvin Gonzalez

Date Complaint Received: October 13, 2005

Materials Reviewed: Correspondence, Contact Report 2005-443, staff notes and committee notes

Committee: Chairperson Jorge Reynardus, Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director; Fernando L. Robreño, Conflict Resolution Specialist

Meeting Date: April 4, 2006

Present: Wilmir Barrios, Complainant

Complaint: The complainant stated that he was running to Eva Moore Park when it began to rain. The complainant ran to a nearby gas station at NW 36 Street and 2 Avenue to avoid getting wet. The complainant stated he bought a Red Bull and was standing outside waiting for the rain to stop. While there, a brown unmarked police vehicle pulled up and the two MDPD officers inside, Joseph Nagy and Melvin Gonzalez, began calling people over and asking for their names. When the Complainant was called over he asked why and the officers told him he could be arrested if he didn't comply since he was standing under a "no loitering" sign. The complainant complied and gave his name and stated he had never been arrested. The complainant stated Officer Nagy then called him a liar and said his name came up in the system as having been arrested. The complainant told the officers he would file a complaint against them.

The complainant alleges that:

Detectives Nagy and Gonzalez were intimidating and discourteous when they called him a liar and repeatedly threatened to arrest him.

Department Response: MDPD Contact Report # 2005-443

The complaint was accepted by PCB Sgt. Jennifer Lombardi and was forwarded to the Warrants Bureau, where the accused officers are assigned, for action.

Investigator: Sgt. Ramiro Montejo, Warrants Bureau

Reviewer: Lt. Daniel Borrego

District Supervisor: Major Matthew Boyd

The following is excerpted from MDPD Contact Report 2005-443 dated October 7, 2005.

Statement from Detective Joseph Nagy

Det. Nagy stated that on October 4, 2005 he and Det. Gonzalez drive into the Sunoco gas station to purchase some refreshments. As he exited the unmarked unit an unknown white female customer summoned him. The female pointed out a group of males that were loitering along the wall next to the entrance of the gas station's food mart and stated they were harassing her. Det. Nagy approached the group of approximately four males and advised them to disperse, pointing out a "no loitering" sign prominently displayed on the wall. Det. Nagy stated they ignored his orders at which time he asked them for identification. Det. Nagy stated that at no time was he disrespectful to Mr. Barrios.

Statement from Detective Melvin Gonzalez

Det. Gonzalez corroborated Det. Nagy's statement.

Sgt. Ramiro Montejo's Notes

Sgt. Montejo met with Mr. Barrios at Mr. Barrios' home on November 15, 2005. Sgt. Montejo explained to Mr. Barrios that Det. Nagy was acting within the scope of his authority while investigating a citizen's complaint. Mr. Barrios stated he was unaware of the citizen's complaint and understood the detective's actions.

Sgt. Montejo assured Mr. Barrios that this incident would be documented and discussed with Detective Nagy. Mr. Barrios thanked Sgt. Montejo and stated he was satisfied.

Sgt. Montejo wrote that, based on the foregoing, no further action was anticipated by the Warrants Bureau.

Committee Remarks

MDPD and Sgt. Montejo were invited to attend the meeting, however, they were not in attendance.

Concerns over Officers' Statements

Dr. Diaz pointed out that the officers stated in the Contact Report they were flagged down by a white female who stated that several men standing near the complainant were harassing her.

Mr. Barrios stated that there was no white female at the scene and that Officer Nagy never opened the door to the car or step out.

Dr. Diaz stated that Sgt. Montejo wrote in his report that Mr. Barrios was satisfied and did not wish to file a complaint.

Mr. Barrios stated that he was satisfied that Sgt. Montejo came out to his residence but never stated nor signed that he wanted to withdraw his complaint.

Concerns over Loitering as Probable Cause

Mr. Barrios stated that he was at the gas station because it was raining and he was waiting for the rain to let up so he could continue his run.

Mr. Reynardus read from the County Ordinance and State Law about “loitering” and stated they did not apply because Mr. Barrios was not “loitering.” *The Webster Dictionary defines “loiter” as: “to remain in an area for no obvious reason.”*

Ms. Boersma stated that common sense would dictate that someone would seek shelter if it was raining hard therefore Mr. Barrios could not have been “loitering.” He had obvious reason for being at the gas station.

Concerns over Complainant’s Record

Dr. Diaz showed Mr. Barrios a printout from the Clerk of Courts website that showed Mr. Barrios had been arrested and charged with a County Ordinance violation.

Mr. Barrios stated he was given a “ticket” for spear diving off Government Cut in 1994, but he was never arrested. Mr. Barrios stated he went to court and was told to complete 25 hours of community service and pay a \$150 fine.

Mr. Reynardus stated that since it was a misdemeanor Mr. Barrios was not taken to jail but given a Promise to Appear (PTA). A PTA is an arrest, even though the arrestee is not physically taken to jail.

Ms. Boersma stated that the public should be made aware that a PTA constitutes an arrest in the eyes of law enforcement, because most people believe, as Mr. Barrios does, that an arrest means being handcuffed and going to jail.

Officers’ Profiles

Dr. Diaz stated he wanted to request a copy of the accused officers’ profiles.

Mr. Robreño agreed to request them from MDPD.

Committee Findings

A. Regarding the allegation

The committee found the allegation to be **SUSTAINED**, based on the following:

Mr. Barrios' testimony has remained consistent and is credible. The failure of MDPD to participate in the committee meeting makes it difficult to support their account of the incident.

Officer Nagy's actions were not consistent with Miami-Dade County's mission of "delivering excellence everyday." His actions were also in violation of MDPD Administrative Order 2-18, Section H, paragraph 9:

"Effective law enforcement depends on a high degree of cooperation between the Department and the public. While urgency of a situation might preclude ordinary social amenities, discourtesy under any circumstance is indefensible. Employees shall be courteous and civil to the public and others, avoiding harsh, violent, profane, or insolent language or manner, and shall maintain objective attitudes regardless of provocation."

B. Other Findings

The complainant signed a Promise to Appear (PTA) for an ordinance violation in 1994 but he was not physically arrested. Mr. Barrios answered truthfully, according to his understanding of arrest, when he told the officer he had never been arrested, because he had not been taken to jail.

Officer Nagy was correct to state that Mr. Barrios had a prior arrest record because, by legal definition, he was arrested.

Officer Joseph Nagy's Employee Profile – Date of Hire 10/22/1990

Officer Nagy has had 2 Personnel Complaints (PC), 5 Internal Affairs investigations and 1 Shooting Investigation (SI). Of those, one allegation was "Sustained" for "Discourtesy" in 1995 (PC-1995-0319).

Officer Nagy received a written reprimand in 1998 for being involved in a "preventable County vehicle accident."

Officer Nagy has also received 36 commendations.

Officer Melvin Gonzalez's Employee Profile – Date of Hire 6/26/1995

Officer Gonzalez has had 1 Personnel Compliant (PC), 5 Internal Affairs investigations and 1 Shooting Investigation (SI). Of those, four allegations of “Improper Procedure” were “Sustained,” two for IA 1999-0130 and two for SI 2004-0037.

Officer Gonzalez received a written reprimand in 2002 for being involved in a “preventable County vehicle accident.”

Officer Gonzalez has also received 50 commendations.

Observation to Promote Constructive Police/Citizen Interactions

An arrest becomes a “Promise To Appear (PTA),” also known as a “Notice to Appear,” when the arresting officer checks a box on the bottom of the Complaint/Arrest Affidavit and allows the person arrested to sign under the paragraph which reads: “I understand that should I willfully fail to appear before the court as required by this notice to appear that I may be held in contempt of court and a warrant for my arrest shall be issued....”

Promises to appear may be issued by arresting officers when the offense involved is a misdemeanor or ordinance violation. By definition, a promise or notice to appear is “a written order issued by a law enforcement officer in lieu of physical arrest requiring a person accused of violating the law to appear in a designated court or government office at a specified date and time.” - Florida Rule of Criminal Procedure 3.125.

The public should be made aware that a Promise to Appear (PTA) is an Arrest Affidavit which the accused violator has signed promising to appear in court. The signed PTA is an arrest document which replaces a physical arrest and allows the person to be released from the scene. Even though a person is not physically placed in handcuffs and taken to jail, a PTA appears as an arrest on his/her record.

Recommendations

- 1- That MDPD provide Mr. Barrios a written apology for any inappropriate behavior of the MDPD officers he encountered.
- 2- That Officers Joseph Nagy and Melvin Gonzalez be counseled about inappropriate actions in conducting a records check and in the importance of good police/community relations.
- 3- That the Panel conclude the complaint.